

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision : September 11th, 2007

CS(OS) No.706/2005

M/s.Gurara Agencies PLAINTIFF
! Through: Mr.S.K.Gupta & Mr.Pankaj Sharma,
Advocates.

Vs.

\$ M/s.J.L.Knits (India) Ltd DEFENDANT
^ Through: Nemo.

CORAM :-

* HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether the judgment should be reported in the Digest?

ANIL KUMAR, J. (Oral)

1. This judgment shall dispose of plaintiff's suit for recovery of Rs.27,84,000/- filed under Order 37 of the Code of Civil Procedure, 1908.

2. The plaintiff has contended that it is a registered partnership firm registered under the Indian Partnership Act. Sh.Sant Ram Aggarwal,

Sh.Pardeep Aggarwal, Sh.Dinesh Aggarwal and Sh.Ramji Lal Aggarwal are the partners of the plaintiff firm.

3. According to the plaintiff it is registered under the Indian Partnership Act and Delhi Sales Tax Rules, 1975. The plaint is signed, verified and instituted by Sh.Pardeep Aggarwal who is the registered partner of the plaintiff firm.

4. According to the plaintiff defendant is a company which has business dealing with the plaintiff firm. The plaintiff had been supplying the required quantity of chemical and dyes to the defendant company for which the invoices were raised regularly. The last transaction was in July, 2003 whereby invoice No.55069 for Rs.20,160/- dated 10.7.2003 was raised after the goods were sold and delivered to the defendant.

5. The plaintiff's averment is that defendant had been making part payments of the price of goods sold and delivered to the defendant company. The plaintiff company had an account in the name of the defendant company and the price of the goods sold and delivered to the defendant company used to be debited and the amounts received in payment of the amounts due from defendant to the plaintiff company used to be credited in the said account. As

on 1st April, 2004 a sum of Rs.27,45,261.84 was due from defendant to the plaintiff company.

6. The defendant company, therefore, issued a cheque bearing No.727952 dated 11.12.2003 for a sum of Rs.24 lakhs drawn on Bank of Punjab Ltd, L-40, Connaught Place, New Delhi towards the part payment of the amounts due from defendant to the plaintiff for the price of the goods sold and delivered by the plaintiff to the defendant company.

7. The said cheque when presented by the plaintiff was returned by the bankers of the defendant company on account of insufficient funds on presentation in the account of the defendant.

8. As the cheque given by the defendant toward part payment of amounts due from the defendant to the plaintiff had been dishonored, Therefore, the plaintiff sent a legal notice dated 9.1.2004 by registered post and under postal certificate which was served on the defendant company demanding the amounts due from the defendant to the plaintiff including the amount of cheque which was dishonored. However, despite the notice of demand being sent to the defendant company, the amounts due from the

defendant to the plaintiff company has not been paid.

9. Consequently, the plaintiff filed a criminal complaint under Section 138 of Negotiable Instruments Act against the defendant company and one of its Director, in respect of the cheque for Rs.24 lakhs which was dishonored on account of insufficient funds which is still pending before the concerned Criminal Court.

10. As the amount of the cheque which was given by the defendant company to the plaintiff company was dishonored, the present suit under Order 37 of the Code of Civil Procedure was filed by the plaintiff.

11. Summons under Order 37 Rule 2 (2) of the CPC in form No.4 in Appendix B were issued to the defendant which was duly served, however, no appearance was filed by the defendant.

12. During the pendency of the suit the registered partner of the plaintiff firm who had signed, verified and instituted the plaint on behalf of the plaintiff firm had resigned and consequently the plaintiff had amended the plaint incorporating the changes undergone in the plaintiff firm. Consequent to the

amendment of the plaint the summons were issued again in the prescribed form against the defendant and the summons were served by substituted service by way of proclamation in the newspaper "Statesman" as well as by affixation on the notice board. No appearance was again filed by the defendant. Consequently, the averments made by the plaintiff in the plaint are deemed to be admitted.

13. The plaintiff has filed the certified copy of the cheque which was dishonored, the original of which has been filed by the plaintiff before the concerned criminal Court. The plaintiff has also filed the certified copy of the bank memo dated 18th December, 2003 returning the dishonored cheque on account of insufficient funds. The copy of notice dated 9.1.2004 demanding the amount of cheque and interest thereon has also been filed. The plaintiff has also produced a certified copy of the order of the criminal Court summoning Mr.Pravin Singla, Director of the defendant company. A copy of the notice dated 25.10.2004 along with the postal receipts and courier receipts have also been produced by the plaintiff. The plaintiff has also produced the documents to show that the suit has been filed by a duly authorized person on behalf of the plaintiff firm.

14. The plaintiff has claimed simple interest at the rate of 12% per annum on the amount of Rs.24 lakhs, for which the cheque was given by defendant to the plaintiff which was dishonored on presentation on account of insufficient funds.

15. The relief claimed by the plaintiff on the basis of dishonored cheque is within the ambit and scope of Order 37 of Code of Civil Procedure and there is no other impediment in decreeing the suit on failure of the defendant in putting appearance pursuant to the summons served on the defendant under the appropriate form under Order 37.

16. The plaintiff has claimed an amount of Rs.3,84,000/- as interest at 12% per annum from 17.12.2003 upto 16.4.2005.

17. Consequently, the suit of the plaintiff is decreed for a sum of Rs.27,84,000/- including a principal amount of Rs.24 lakhs on account of cheque which was given to the plaintiff and a money decree for recovery of the said amount from the defendant is passed in favor of plaintiff and against the defendant. Plaintiff is also awarded pendente lite and future interest at the rate of 9% per annum from the date of institution of the suit till the date of

realization of the decretal amount. Cost is also awarded to the plaintiff. The suit is decreed in terms hereof.

September 11, 2007
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ANIL KUMAR, J.